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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,667

03/25/2004

Jens Feierabend

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ZARLEY LAW FIRM P.L.C.  
CAPITAL SQUARE  
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DES MOINES, IA 50309-2350

EXAMINER

CARTAGENA, MELVIN A

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

02/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,667	<b>Applicant(s)</b> FEIERABEND, JENS	
	<b>Examiner</b> MELVIN A. CARTAGENA	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22,25,27,28,30 and 32-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,25,27,28,30,32,33 and 38-43 is/are rejected.
- 7) ☒ Claim(s) 34-37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 13, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22, 25, 27, 28, 30, 32, 33 and 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,095,381 to Schwanenberg in view of US 6,089,411 to Baudin et al.

Schwanenberg shows a self-closing valve for dispensing flowable material as seen in Figs. 13 and 14, a curved membrane 5, a support segment 26 substantially in the same plane as the annular section 24, a connecting wall 4, star-shaped slits 6 and 7, a reinforcement ring 31 with openings 30, the self-closing valve is made of silicon or an elastomeric plastic material, see column 8 lines 22-25. Schwanenberg is silent about the membrane 5 having a constant thickness. Baudin shows a valve member 44, seen in Fig. 4, having a membrane 42a of constant thickness. It would have been obvious to a person with ordinary skill in the art at the time the invention was

made to modify the valve member of Schwanenberg to be of constant thickness to facilitate manufacture of the membrane as taught by Baudin.

***Allowable Subject Matter***

4. Claims 34-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed November 13, 2008 have been fully considered but they are not persuasive. Applicant argues that the claims are directed to the embodiment of Fig. 8, the claims can not be directed to the embodiment of Fig. 8 because Fig. 8 lacks an annular section arranged between the support segment and the membrane in substantially a common plane with the support segment, or on a plane parallel to the same, as claimed in claims 22, 42 and 43. In addition; in the device of Schwanenberg the annular section 24 is in the same plane or in a parallel plane with the support segment 26, see Figs. 13 and 14.

With respect to applicant's arguments that the angle between the folding connecting walls is acute not obtuse, see Schwanenberg Fig. 13, which is identical as the applicant's Fig. 1 and shows the same angle between the folding connecting walls.

In response to applicant's arguments with respect to the number of slits in the valve, see that Schwanenberg comprises up to five slits configured in the same star shape as claimed by the applicant and capable of closing upon depressurization of the container; In addition, the slit valve of Schwanenberg does not open as the membrane moves from the resting position shown in Fig. 13 to the extended position shown in Fig. 14; the shape and position of the valve with respect to

Art Unit: 3754

the connecting wall remains unchanged; Therefore, there is substantially none or minimal torque transferred from the connecting wall to the membrane.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on M-F (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754